

*East End Hangars v East Hampton*  
*The Coalition v East Hampton*  
*Blade Air Mobility v East Hampton*

*Index No.: 602799/2022*  
*Index No.: 602801/2022*  
*Index No.: 602802/2022*

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF SUFFOLK

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In the Matter of the Application of:

East End Hangars, Inc., Hampton Hangars, Inc.,  
a/k/a Hampton Hangers, Inc., Thomas Bogdan,  
Joseph Dryer, Suse Lowenstein, Louise Sasso,  
and Lynden Restrepo,

Petitioners,

Index No.: 602799/2022

For a Judgment Under Article 78 of the CPLR

-against-

Town of East Hampton, New York,

Respondent.

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In the Matter of the Application of:

The Coalition to Keep East Hampton Airport  
Open, Ltd., Andrew Sabin, Michael Mancuso,  
Edmond Chakmakian, Kelly Bloss, Jennifer Faga,  
Robert Aspenleiter, Thomas Griffin, Douglas  
Donaldson, Harry Ellis, and Dr. George Dempsey,

Petitioners,

Index No.: 602801/2022

For a Judgment Pursuant to Article 78 of the CPLR

-against-

Town of East Hampton, New York,

Respondent.

-----X

*East End Hangars v East Hampton*  
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*Index No.: 602799/2022*  
*Index No.: 602801/2022*  
*Index No.: 602802/2022*

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In the Matter of the Application of:

Blade Air Mobility, Inc., Bonnie Brady,  
Thomas Dean, Jason Deland, Lisa Deveglio,  
Michael Donnelly, Russell Munson, and  
Alicia Whitaker,

Petitioners,

Index No.: 602802/2022

For an Order and Judgment Pursuant to CPLR  
Article 78

-against-

Town of East Hampton, Town Board of the  
Town of East Hampton, and Peter Von Scoyoc,  
in his official capacity as East Hampton Town  
Supervisor,

Respondents.

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**NOTICE OF ENTRY**

PLEASE TAKE NOTICE that the attached is a true and correct copy of the Order entered  
in this action signed by the Honorable Paul J. Baisley on October 19, 2022, and entered in the  
office of the Clerk of the Supreme Court, Suffolk County, on October 19, 2022.

Dated: New York, New York  
October 19, 2022

Respectfully submitted,  
GIBSON, DUNN & CRUTCHER LLP

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- and -

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*Attorneys for Petitioners*

Short Form Order

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART XXXVI SUFFOLK COUNTY

**PRESENT:****HON. PAUL J. BAISLEY, JR., J.S.C.**

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In the Matter of the Application of

EAST END HANGARS, INC., HAMPTON  
HANGARS, INC., a/k/a HAMPTON HANGERS,  
INC., THOMAS BOGDAN, JOSEPH DRYER,  
SUSE LOWENSTEIN, LYNDEN RESTREPO and  
LOUISE SASSO,

Petitioners,

For a Judgment Under Article 78 of the CPLR

-against-

TOWN OF EAST HAMPTON, NEW YORK,

Respondent.

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In the Matter of the Application of

THE COALITION TO KEEP EAST HAMPTON  
AIRPORT OPEN LTD., ANDREW SABIN,  
MICHAEL MANCUSO, EDMOND  
CHAKMAKIAN, KELLY BLOSS, JENNIFER  
FAGA, ROBERT ASPENLEITER, THOMAS  
GRIFFIN, DOUGLAS DONALDSON, HARRY  
ELLIS AND DR. GEORGE DEMPSEY,

Petitioners,

For a Judgment Pursuant to Article 78 of the CPLR

-against-

TOWN OF EAST HAMPTON, NEW YORK,

Respondents.

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**ACTION 1:****INDEX NO.: 602799/2022**

MOTION SEQ. NO.: 002 MG  
MOTION SEQ. NO.: 005 MD  
MOTION SEQ. NO.: 006 MD  
MOTION SEQ. NO.: 007 MG  
MOTION SEQ. NO.: 009 MG  
MOTION SEQ. NO.: 012 MD

**PETITIONERS' ATTORNEYS:**

Pillsbury Winthrop Shaw Pittman, LLP  
31 West 52<sup>nd</sup> Street  
New York, New York 10019-6118

Eckert Seamans Cherin & Mellott, LLC  
10 Bank Street, #700  
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**RESPONDENT'S ATTORNEYS IN  
ACTIONS 1, 2 and 3:**

Cooley LLP  
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New York, New York 10001

Whiteman Osterman & Hanna, LLP  
One Commerce Plaza, 19<sup>th</sup> Floor  
Albany, New York 12260

Rigano LLC  
538 Broadhollow Road  
Melville, New York 11747

**ACTION 2:****INDEX NO.: 602801/2022**

MOTION SEQ. NO.: 001 MG  
MOTION SEQ. NO.: 004 MD  
MOTION SEQ. NO.: 005 MD  
MOTION SEQ. NO.: 007 MG  
MOTION SEQ. NO.: 009 MD

**PETITIONERS' ATTORNEYS:**

Greenberg Traurig, LLP  
2317 Montauk Highway  
Bridgehampton, New York 11932-4000

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In the Matter of the Application of

BLADE AIR MOBILITY, INC., BONNIE BRADY,  
THOMAS DEAN, JASON DELAND, LISA  
DEVEGLIO, MICHAEL DONNELLY, RUSSELL  
MUNSON and ALICIA WHITAKER,

Petitioners,

For an Order and Judgment Pursuant to CPLR  
ARTICLE 78

-against-

TOWN OF EAST HAMPTON, TOWN BOARD OF  
THE TOWN OF EAST HAMPTON and PETER  
VAN SCOYOC, in his official capacity as EAST  
HAMPTON TOWN SUPERVISOR,

Respondents.  
-----X

### ACTION 3:

**INDEX NO.: 602802/2022**

MOTION SEQ. NO.: 001 MG  
MOTION SEQ. NO.: 004 MD  
MOTION SEQ. NO.: 005 MD  
MOTION SEQ. NO.: 007 MG  
MOTION SEQ. NO.: 009 MD

### PETITIONER'S ATTORNEYS:

Gibson Dunn & Crutcher, LLP  
200 Park Avenue,  
New York, NY 10166-0005

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3750 Express Drive South, Suite 200  
Islandia, NY 11749

### INTERVENOR'S ATTORNEYS IN ACTIONS 1, 2 and 3:

Law Offices of Paul A. Lange  
80 Ferry Blvd  
Stratford, CT 06615

**ORDERED** that petitioner East End Hangars, Inc., Hampton Hangars, Inc., a/k/a Hampton Hangars, Inc., Thomas Bogdan, Joseph Dryer, Suse Lowenstein, Lynden Restrepo, and Louise Sasso's notice of petition and petition (sequence no. 002) and amended petition and the respondent Town of East Hampton, New York's motion (sequence no. 006) to dismiss the petition, and Sound Aircraft Services, Inc.'s motion (sequences no. 012, 009, and 009) served by order to show cause (BAISLEY, J.) to intervene, and petitioner The Coalition to Keep East Hampton Airport Open, Ltd., Andrew Sabin, Michael Mancuso, Edmond Chakmakian, Kelly Bloss, Jennifer Faga, Robert Aspenleiter, Thomas Griffin, Douglas Donaldson, Harry Ellis, and Dr. George Dempsey's notice of petition and amended petition (sequence no. 001) and the Town of East Hampton, New York's motion (sequence no. 005) to dismiss and petitioner Blade Air Mobility, Inc., Bonnie Brady, Thomas Dean, Jason Deland, Lisa Deveglio, Michael Donnelly, Russell Munson, and Alicia Whitaker's motion (sequence no. 001) served by order to show cause (SANTORELLI, J.) for a preliminary injunction and petitioner Blade Air Mobility, Inc., Bonnie Brady, Thomas Dean, Jason Deland, Lisa Deveglio, Michael Donnelly, Russell Munson, and Alicia Whitaker's petition amended petition (001 for a judgment granting relief under Article 78 of the CPLR, and respondent Town of East Hampton, Town Board of the Town of East Hampton, and Peter Van Scoyoc, in his official capacity as East Hampton Town Supervisor's motion (sequence no 005) to dismiss the petition, and petitioners' motions (007, 009, 007 and 007) for a preliminary injunction enjoining the Town from deactivating or closing HTO Airport on May 17,

*East End Hangers, et al. v Town of East Hampton*

*Index No.: 602799/2022*

*The Coalition to Keep East Hampton Airport Open, et al. v Town of East Hampton*

*Index No.: 602801/2022*

*Blade Air Mobility, et al. V Town of East Hampton, et al.*

*Index No.: 602802/2022*

2022 or any date thereafter pending a determination on petitioners' motion for a preliminary injunction, and the petitioners' motions (005, 004, 004) for expedited discovery, are consolidated for the purposes of this determination, and as so consolidated, it is further

**ORDERED, ADJUDGED, AND DECREED** that Sound Aircraft Services, Inc.'s motions to intervene (motion seq. nos.: 012, 009 and 009) are denied; and it is further

**ORDERED, ADJUDGED, AND DECREED** that the motions to dismiss the petitioners' petitions (motion seq. nos.: 006, 005 and 005) are denied; and it is further

**ORDERED, ADJUDGED, AND DECREED** that petitioners' petitions (motion seq. nos.: 002, 007 and 009; 001 and 007; and 001 and 007) are granted and the Town is enjoined from deactivating or closing HTO Airport; and it is further

**ORDERED, ADJUDGED, AND DECREED** that petitioners' motions for expedited discovery (motion seq. nos.: 005, 004 and 004) are denied as moot.

The Town of East Hampton Airport ("HTO Airport") has operated as a public use airport servicing the East End of Long Island for eighty-four years. Petitioners contend that the Town of East Hampton ("The Town") has made an arbitrary, capricious, and reckless decision to close the HTO Airport and reopen it as a private use airport. Petitioners further contend that the Town's actions constitute a clear violation of the State Environmental Quality Review Act ("SEQRA") and an attempt to circumvent the Airport Noise and Capacity Act of 1990 ("ANCA"). Petitioners move for a judgment finding that (1) respondent's actions were in excess of jurisdiction under CPLR § 7803(2); respondent's actions were arbitrary and capricious in violation of CPLR § 7803(3); (3) respondent's actions were arbitrary and capricious for failure to abide by the requirements of SEQRA in violation of CPLR § 7803(3); (4) respondent's actions were in violation of the lawful procedures of ANCA under CPLR § 7803(3).

HTO Airport is located at 200 Daniels Hole Road in Wainscott and serves fixed wing and rotary commercial and non-commercial aircraft. HTO Airport was constructed in 1936 with federal funds from the Works Progress Administration and opened in 1938 as one of the federal public works projects of the New Deal era. The airport comprises 610 acres and has two active runways. It contains 62 hangars for parking, storage, and maintenance of aircraft, as well as a control tower. Approximately 30,000 take-offs and landings occur at HTO Airport annually, with the majority of the traffic taking place between May and September. The FAA has identified the HTO Airport as important to national air transportation and included HTO Airport in its National Plan of Integrated Airport Systems. HTO has enjoyed significant federal support, including funds used for capital improvements to the HTO Airport's infrastructure and facilities.

*East End Hangers, et al. v Town of East Hampton**Index No.: 602799/2022**The Coalition to Keep East Hampton Airport Open, et al. v Town of East Hampton**Index No.: 602801/2022**Blade Air Mobility, et al. V Town of East Hampton, et al.**Index No.: 602802/2022*

In 1982 Congress passed a law allowing federal grants to be issued for airport improvements. The HTO Airport received these grants, assuring the federal government in return that it would continue to operate the airport consistent with its history, making HTO Airport available for public use on reasonable terms and without unjust discrimination by the Town with respect to any type, kind and class of aeronautical activities. In 2001, the Town received an airport improvement grant of \$1,410,000.00. under this program and gave the federal government its standard assurance. Under the Congressional grant program, the Town had to commit to make HTO Airport available for public use on reasonable terms for a period of 20 years. Three additional assurances did not expire at the end of the twenty-year period and include exclusive rights, airport revenue, and civil rights. On September 26, 2021, when the twenty year period ended, the Town created a plan to exercise greater control over the airport. Petitioners contend that the plan expropriated the use of approximately 10 million dollars in surplus grant funds, airport revenues and user fees, and attempted to extinguish the three remaining grant assurances. On January 20, 2022, the Town voted to deactivate HTO Airport to the public, effective on February 28, 2022. Under the Town's plan, HTO Airport would remain closed for a period of three days and then reopen as a new and private airport on March 4, 2022. On February 18, 2022, the Town confirmed that it would not be undertaking deactivation or closure of HTO prior to May 17, 2022. On May 16, 2022 the court (BAISLEY, J.) ordered, *inter alia*, that the Town is prohibited and prevented from deactivating HTO "on or before May 17, 2022, or any date thereafter."

As a preliminary matter, Sound Aircraft Services, Inc's application to intervene is denied. The determination to allow other interested persons to intervene is addressed to the sound discretion of the court (*E. Deane Leonard v. Plan. Bd. Of Town of Union Vale*, 136 AD3d 866, 25 NYS3d 319 [2<sup>nd</sup> Dept. 2016]). Here, the intervenor failed to include a proposed pleading delineating the claims or defenses upon which it seeks to intervene as required by CPLR §1014, and accordingly, the motion to intervene is denied.

Petitioners contend that the Town's plan does not comply with the procedural requirements of ANCA, and that it violates the specific notice requirement in the FAA's regulations governing the deactivation and activation of airports. Specifically, if the Town were to deactivate the HTO Airport and then activate a new airport, it would need to provide the FAA with a 90 day notice before the deactivation of HTO and an additional 90 day notice before the activation of the new airport. Petitioners further contend that the Town perceives the temporary closure as a way to avoid ANCA's mandate while also permitting the Town to retain the approximate ten million dollars in federal grant money. Petitioners also assert that the FAA has indicated that once the airport is deactivated that it may take approximately two years to restore the current capability to the airport. Petitioners further note Town of East Hampton Supervisor Peter Van Scoyoc's January 18, 2022 press release which states that "the impact of the



*East End Hangers, et al. v Town of East Hampton*

Index No.: 602799/2022

*The Coalition to Keep East Hampton Airport Open, et al. v Town of East Hampton*

Index No.: 602801/2022

*Blade Air Mobility, et al. V Town of East Hampton, et al.*

Index No.: 602802/2022

operational restrictions would be tracked and assessed during the upcoming season as part of an environmental impact statement under the New York State Environmental Quality Review (SEQRA).” Petitioners contend that the Town’s plan to act on closing and re-opening the airport and then conducting the SEQRA review afterward, is improper.

The respondent Town moves to dismiss the petitions pursuant to CPLR 3211, contending that in November 2020, the FAA told the Town that it could close HTO and open a new, private-use airport upon expiration of the applicable grant assurance obligations in September 2021. Respondent asserts that it did, in fact, adopt the approach suggested by the FAA letter dated November 6, 2020. Specifically, the Town chose “option 2” set forth in the FAA letter, which would allow the Town to open a new airport as a private-use airport that would require “prior permission”, i.e., that the Town has the federal right to set limitations on the number and/or type of operations at the new airport. Under the Town’s proposed prior permission required framework, all operators would be able to use the airport subject to a reasonable curfew and one round-trip per day per aircraft limits. “Option 4” in the FAA letter would permit HTO to remain open and the Town not have any more control over the operations than it has had in the past which the Town contends is inconsistent with the community’s goals and desires. The Town further contends that the FAA letter does not indicate that the Town must comply with ANCA should the Town choose “option 2,” rather, the Town would only need to comply with ANCA if it chose “option 1.” Moreover, the Town asserts that the FAA made clear that if the Town takes its suggestion to close HTO and open a new airport (“option 2”) that the Town can close the airport and use the remaining funds in the airport account as it desires. On January 20, 2022, the Town formally notified the FAA of its plan to close HTO and open a new airport by filing two FAA Form 74801s. The Town submits that the Town and FAA’s agreed upon date for deactivation was May 17, 2022 and the agreed upon date for activation was May 19, 2022.

On a motion to dismiss pursuant to CPLR R 3211, the movant has the burden to demonstrate that, based upon the four corners of the complaint, that the pleading states no legally cognizable cause of action (*Leon v. Martinez*, 84 NY2d 83, 638 NE2d 511, 614 NYS2d 972 [1994]). Moreover, “the court must accept the facts as alleged in the complaint as true, accord plaintiff the benefit of every possible favorable inference and determine only whether the facts as alleged fit within any cognizable legal theory” (*Morone v. Morone*, 50 NY2d 481, 484, 413 NE2d 1154, 429 NYS2d 592 [1980]). However, “vague and conclusory allegations” or “bare legal conclusions” are insufficient to meet this standard (*Goel v Ramachandran*, 111 AD3d 783, 791-92, 975 NYS2d 428 [2<sup>nd</sup> Dept 2013]).

In order to establish standing under SEQRA, a party must show that they have suffered an “injury-in-fact,” and that such injury falls within the “zone of interests” which SEQRA seeks to protect (*Soc’y of Plastics Indus., Inc. v. Cnty of Suffolk*, 77 NY2d 761, 573 NE2d 1034, 570



*East End Hangers, et al. v Town of East Hampton*

Index No.: 602799/2022

*The Coalition to Keep East Hampton Airport Open, et al. v Town of East Hampton*

Index No.: 602801/2022

*Blade Air Mobility, et al. V Town of East Hampton, et al.*

Index No.: 602802/2022

NYS2d 778, 21 Env'tl. L. Rep. 21 [1991]). The Town asserts that petitioners have failed to satisfy the injury-in-fact requirements because they do not live near HTO airport, and therefore, cannot establish that they will suffer direct harm in some way different from that of the public at large. Petitioners assert that they live in close proximity to other area airports and/or their flight paths and that changing HTO to a private use airport will create diversions that will result in significant adverse impacts to the petitioners. Here, the affidavits submitted by petitioner Jennifer Faga, Harry Ellis, Thomas Griffin establish that they live near the flight path of Montauk Airport and that they can often hear aircraft taking off and landing near their properties and have concerns about the increased noise that will result from the closing of East Hampton Airport. Similarly, the affidavit of Michael Mancuso establishes that he lives in the flight path of Gabreski Airport in Westhampton and has concerns about increased environmental impacts due to increased diversions to that airport. Petitioners have established that they live in geographic areas which will be affected by the closing of HTO and will be impacted in a different way from the public at large, and their proximity establishes a special interest that thereby confers standing (*Society of Plastics*, supra; *McGrath v. Town Bd. of N. Greenbush*, 254 AD2d 614, 678 NYS2d 834 [3<sup>rd</sup> Dept. 1998]). Moreover, the petitioners adequately establish organizational standing. An organizational petitioner has standing to sue where (1) any one or more of its individual members have standing, (2) the association is protecting an interest germane to its purposes, and (3) the association can appropriately act as representative without the need for the individual members to participate (*Society of Plastics*, supra, at 775). As local residents and business owners in East Hampton and Montauk, petitioners are members of a group presumptively affected by the change on the neighboring property.

In moving forward with the airport closure plan the Town has indicated that it will close the airport and impose significant restrictions on flights at the new airport, and thereafter, complete its Environmental Impact Statement (EIS). However, the purpose of SEQRA is for government agencies to consider the environmental impacts of its actions at the earliest possible time (*Matter of Gordon v. Rush*, 299 AD2d 20, 745 NYS2d 183 [2<sup>nd</sup> Dept 2002]). EIS are documents that rely on forward-looking predictive models for traffic, noise and various other environmental impacts. Court review of SEQRA compliance “insures that the agencies will honor their mandate regarding environmental protection by complying strictly with the prescribed procedures and giving reasoned consideration to all pertinent issues revealed in the process” (*Jackson v. New York State Urban Dev. Corp.*, 67 NY2d 400, 417, 503 NYS2d 298, 494 NE2d 429, 503 NYS2d 298, 17 Env'tl. L.Rep. 20, 362 [1986]). Under SEQRA, courts apply the arbitrary and capricious standard of review in deciding whether an agency identified the relevant areas of environmental concern, took a hard look at those areas, and made a reasoned elaboration for its decision (*Merson v. McNally*, 90 NY2d 742, 688 NE2d 479, 665 NYS2d 605 [1997]). If an EIS is required, the agency (“the Town”) must initiate a public scoping process to determine the content of the EIS, hold a hearing on that draft’s scope, and then issue a final

*East End Hangers, et al. v Town of East Hampton*  
*The Coalition to Keep East Hampton Airport Open, et al. v Town of East Hampton*  
*Blade Air Mobility, et al. V Town of East Hampton, et al.*

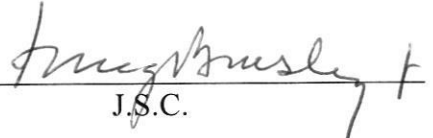
Index No.: 602799/2022  
Index No.: 602801/2022  
Index No.: 602802/2022

scoping document. Here, by planning on conducting its EIS after the Town closes the airport, the Town has acted both beyond its legal abilities and in an arbitrary and capricious manner by planning on conducting its EIS after it closes the airport, and therefore, the Town is enjoined from closing HTO Airport.

The Town further asserts that petitioner's petition should be dismissed because (1) ANCA claims cannot be pursued in state court, (2) ANCA does not apply to airport closures, and (3) ANCA does not apply to private airports. Specifically, the Town asserts that there is no private right of action in state court to enforce ANCA's federal statutory obligations. The Town maintains that if it attempted "option 1," i.e., negotiating mandatory restrictions for aircraft operations, that it would have to comply, but that no such compliance is required for closing HTO and opening a new airport. The Town further maintains that ANCA only applies to public-use airports and not private-use airports. However, when Congress passed ANCA in 1990, it directed the Secretary of the Department of Transportation to establish a national aviation noise policy, including a national program for reviewing airport noise and access restrictions on all airports (49 U.S.C. § 47524(a); 14 C.F.R. § 161.3[a], [c]). In April 2015, the Town passed three local laws codifying restrictions on HTO Airport, including (1) a mandatory curfew on all aircraft traffic, (2) an extended curfew for certain noisy aircraft, and (3) a weekly one-round-trip limit on noisy aircraft. However, in 2016, the United States Court of Appeals for the Second Circuit rejected the restrictions and permanently enjoined the Town's policymaking attempts due to the Town's failure to comply with ANCA (*Friends of the East Hampton Airport, Inc. v. Town of East Hampton*, 841 F.3d 133 [2016]). Here, the Town's decision is contrary to federal law, as it fails to comply with ANCA's procedural requirements for adopting noise and access restrictions affecting stage 2 and stage 3 aircrafts. The Town cannot "be 'free to operate as it wishes' because the federal statutory limitations appl[y] regardless of whether an airport is subject to grant assurances." (*Friends of the East Hampton Airport, Inc. v. Town of East Hampton*, supra at 139). ANCA's text unambiguously indicate Congress's intent for the procedural mandates to apply to all public airport proprietors regardless of their funding eligibility (*Friends of the East Hampton Airport, Inc. v. Town of East Hampton*, supra at 149). The Town's decision to close HTO, affecting the operations of stage 2 and stage 3 aircrafts, is a "noise or access restriction" that is subject to ANCA's notice, review, and approval requirements.

In light of the foregoing, the Town is enjoined from deactivating or closing HTO Airport and the petitioners' petitions are granted in their entirety.

Dated: October 19, 2022

  
J.S.C.

HON. PAUL J. BAISLEY, JR.